

# Court of Appeals, State of Michigan

## ORDER

People of MI v Davonte Tyrell Williams

Docket No. 275889

LC No. 06-100033-02

Brian K. Zahra  
Presiding Judge

Helene N. White

Kurtis T. Wilder  
Judges

The Court orders, pursuant to MCR 7.205(D)(2), that the circuit court's October 11, 2006 order that denied the prosecutor's motion to reverse the district court's dismissal is REVERSED in regard to the first-degree criminal sexual conduct and third-degree criminal sexual conduct charges against defendant. In reviewing a bindover decision, this Court does not defer to the circuit court's decision to any extent; instead, this Court reviews the district court's decision to determine whether it abused its discretion. See *People v Greene*, 255 Mich App 426, 434; 661 NW2d 616 (2003). For purposes of preliminary examination, the proofs adduced must only establish probable cause. *People v Goecke*, 457 Mich 442, 469; 579 NW2d 868 (1998). In this case, the evidence at the preliminary examination established probable cause to believe that defendant, assisted by at least one other person, engaged in vaginal intercourse with the victim a bedroom and in the basement, and that defendant either used force or coercion to commit the acts, or the victim was physically helpless. See MCL 750.520b(1)(d). The evidence also established probable cause to believe that defendant inserted his finger into the victim's vagina in the bedroom, and that defendant used force or coercion to commit the act. See MCL 750.520d(1)(b). As a result, the district court abused its discretion in denying the bindover on the first-degree criminal sexual conduct and third-degree criminal sexual conduct charges against defendant. In regard to the denial of the bindover on the second-degree criminal sexual conduct charge, we find no abuse of discretion.

The motion to file a late answer is GRANTED.

This case is REMANDED to the district court for a bindover to circuit court on the first-degree criminal sexual conduct and third-degree criminal sexual conduct charges. We do not retain jurisdiction. This order shall have immediate effect. MCR 7.215(F)(2).

Judge White joins in the reversal as to one count of first-degree CSC and one count of third-degree CSC, but, as to the second count of first-degree CSC, would permit a bindover on third-degree, rather than first degree, CSC.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

OCT 02 2007

Date

*Sandra Schultz Mengel*  
Chief Clerk